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MM Docket No. 97-138

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maintaining reasonable accessibility to the public. As pointed out in NAB's Petition, we believe that on the whole, the Commission accomplished this goal. However, some limited adjustments are necessary. NAB believes our requests for reconsideration will maintain this balance.

II. NAB REQUESTS LIMITED AND REASONABLE MODIFICATIONS TO THE TELEPHONE REQUEST RULE.

NAB's Petition asked for very limited exemptions from the new telephone request rule that requires broadcasters to mail public file documents after request via the telephone. NAB believes the new rule will greatly burden broadcasters during political campaigns, thus we requested only that the Commission permanently exclude political file documents from the telephone request rule. Political file material would remain reasonably accessible in the traditional manner by in-person visits to the main studio of the station. Clearly, it is the stations that would bear the brunt of the burden when attempting to comply with phone requests for political file documents.³ In attempting to strike a balance when it comes to access to the political file, the best balance would be to maintain access in the traditional manner, through in-person visits. Notably, UCC *et al.* do not oppose NAB's request to exempt political file documents from the telephone request rule.⁴ Thus, the Commission should permanently exclude the political file from the telephone request rule.

³ In comments filed by Lee Hanson in support of NAB's Petition, Mr. Hanson provides the Commission evidence of one type of request that is likely to occur – where a party simply requests that the entire political file be copied and mailed. The request in Mr. Hanson's case happened *after* the election was over. It is not hard to imagine that requests for political file documents over the phone will become extremely burdensome during an election when many candidates and other parties will be requesting information on a daily basis. See Comments of Hanson Communications, Inc., filed December 2, 1998.

⁴ *Opposition* at iii, footnote 1. Additionally, UCC *et al.* do not oppose removing donor lists from noncommercial station public files and NAB's request to clarify that the Commission did not intend to require that all applications be maintained in the public file.

UCC *et al.*, however, do oppose any exemption from the telephone request rule for those stations that do not move their main studios to take advantage of the greater flexibility provided by the revised main studio location rule. UCC *et al.* state that the telephone request rule “was but one element of a decision the overall impact of which was to ease burdens on the broadcast industry by providing long-sought flexibility in locating their main studios.”⁵ While that is true, it is also true that the change in the balance between flexibility and access only applies to stations that do move their main studio locations. For others, the balance of interest should remain as it was before. Recognizing that the increased burden of the telephone request rule should fall only on those stations that take advantage of the new main studio rule would not “significantly undermine the public’s statutorily-guaranteed, and constitutionally-grounded, rights” to monitor broadcasters, as UCC *et al.* maintain.⁶

The stations that do not take advantage of the increased flexibility in main studio location have always been – and will always be – reasonably accessible to the public. The public and stations will still be able to foster a meaningful dialogue because the public will still have the traditional means of access to the public file – by actually visiting the station and meeting station staff members. The basis under which the Commission has revised the rules is to maintain reasonable accessibility for the public. Opponents cannot argue that the public does not have reasonable accessibility to the main studio if, in fact, that main studio never moves from its location that it held prior to the latest relaxation of the rules.

⁵ *Id.* at 2.

⁶ *Id.* at iii.

UCC *et al.* also oppose any request to limit the mailing of documents to within the service area of the station.⁷ They cite several reasons why the Commission should not place this limitation on the telephone request rule. Each of these reasons does not provide enough justification for the Commission to completely disregard the intent and purpose of the public file rule. As pointed out in NAB's Petition, the public file is to provide information to the members of the public that the station serves. However, UCC *et al.* seem to believe that the public file's purpose is far different than the Commission has ever established.

First of all, UCC *et al.* state that the station should be required to mail documents outside of the service area because listeners or viewers may retain counsel located outside the area. Presumably, if a listener or viewer lives within the service area of the station, they themselves could obtain the information – either by visiting the main studio or even making a phone request – and mail it to their counsel on their own.⁸ Obtaining counsel outside of the viewing or listening area is not a valid reason to subject a station's public file information to mailing outside of the service area to individuals or entities that may not have any connection to a viewer or listener when the documents are clearly available to individuals who live in the service area.

UCC *et al.* state that “citizen need to compare the performance of broadcasters located outside of their areas with the performance of their own stations.”⁹ Cross comparison of broadcast stations should not be significant in evaluating the performance of one particular station in a community. Broadcast stations are licensed to serve their own specific community. The Commission has never concluded that the public file is intended to enable cross-community

⁷ *Opposition* at 7.

⁸ Additionally, it presumably would be cheaper for the individual to request and receive the documents themselves rather than pay their attorney to request them.

⁹ *Id.*

comparisons between stations. Clearly, UCC *et al.* is attempting to stretch the scope of the public file beyond any purpose that the Commission has ever asserted.

Finally, UCC *et al.* claims that nationwide mail access to public file information is necessary for national organizations and academics to collect nationwide statistics. Again, this reasoning steps far beyond the stated purposes of the public file. No such broad change in the goals of the public file rule was ever noticed by the FCC in this proceeding. Further, UCC *et al.* do not provide any examples where any information in the public file – that is not already requested by the FCC – is needed on a nationwide basis for statistical purposes, by academics or even “industry trade associations.” If the public is the true arbiter of how a station should operate, then it is only the public that is served by a station that should have access to the information via mail.

UCC *et al.* claims limiting the mailing of documents to within the service area of the station would “cripple citizen enforcement of licensee obligations.”¹⁰ It is inconceivable that citizen enforcement is crippled when the citizens that are actually served by a station still have reasonable access to the public file information either by physically visiting the station or by the telephone request rule. Thus, the reasons provided by UCC *et al.* as to why stations should be required to mail documents outside of the area that they serve are invalid. The Commission should revise the telephone request rule to limit the mailing of documents to within the service area of the station.

¹⁰ *Opposition* at 7.

III. NAB REQUEST FOR CLARIFICATION OF THE RETENTION OF E-MAILS IN THE PUBLIC FILE.

UCC *et al.* do not oppose some limited clarification and limitation of what e-mail must be retained in the public file.¹¹ However, UCC *et al.* misread NAB's Petition regarding the clarification that we seek. UCC *et al.* state that "the Commission should not exempt e-mail sent to a program or suggestion box, as the NAB suggests."¹² NAB's Petition requested clarification of the rule to reflect that "stations only have to retain e-mails that are intended to specifically express comments on the operation of the station and that are sent to the station through a publicized e-mail address."¹³ It may very well be the case that a station will have several publicized e-mail addresses that are program specific e-mail accounts or a "suggestion box" account. NAB is only concerned with the premise that all e-mail accounts – specifically individual employee accounts that are not publicized, nor intended to receive comments from the public – are subject to review with private messages facing possible retention in the public file. The Commission must take privacy concerns into consideration before handing down a blanket requirement to retain all e-mails that comment on station operation in the public file.

If a station provides e-mail accounts to its employees, there is a degree of an expectation of privacy in those e-mails, even if a personal e-mail happens to inadvertently comment on the operation of the station, and thus might be subject to retention in the public file. While UCC *et al.* claim broadcasters have the discretion to edit personal e-mails prior to retaining them in the public file, the privacy concerns and burdens arise regardless of any ability to edit the e-mails. Stations would first have to monitor all e-mail accounts to determine if there are any messages that need to

¹¹ *Opposition* at 8.

¹² *Id.* at 9.

¹³ *NAB Petition* at 6.

be retained. Then, station management would have to determine what portions of any personal e-mails needs to be deleted before routing the e-mail to the public file. It would be practical and efficient for the Commission to clarify that “inadvertent” comments regarding station operation sent to a station via an unpublicized e-mail address are exempt from retention in the public file. If a person has legitimate and meaningful comments regarding station operation, it is likely that the person will properly address those comments to the appropriate personnel or general publicized e-mail address for the station.

IV. NAB REQUEST FOR CLARIFICATION ON THE DUTIES OF BROADCASTERS IN RESPONDING TO PHONE REQUESTS.

NAB’s Petition merely requested that the Commission explain from the outset what it expects from stations when a phone request is made. If stations have clear guidelines regarding their duties under this new regulation, potential conflicts will be avoided if individual requests by phone exceed what the Commission intended by “assisting callers” and “answering questions they may have about the actual contents...”.¹⁴ This is not a request for more regulation. It is a request to clarify the regulations that the Commission has established. If, in fact, the Commission only intended for broadcasters to provide information regarding what documents are contained in the file, dates of filing and the number of pages of those documents – as outlined in the rule as an example – then it should explicitly state that those are the duties.¹⁵ This clarification would not complicate compliance, as suggested by UCC *et al.* It would provide broadcasters and the public

¹⁴ *Report and Order* in MM Docket No. 97-138, ___ FCC Rcd ___ (1998) at ¶ 24-26.

¹⁵ The lack of clarity in the required duties of stations and other areas outlined in NAB’s Petition seem to demonstrate some merit in the Petition for Reconsideration filed by the Named State Broadcaster Associations that asked for complete elimination of the telephone request rule. If the FCC is unwilling to make the adjustments to ensure that the new rules are not unduly burdensome, then it should consider the Named State Broadcaster Associations’ request to eliminate the entire telephone request rule.

with the proper guidance as to what can – and should – be expected of station personnel when a member of the public calls to request documents.¹⁶ It is not unreasonable to ask the Commission to proactively establish guidelines when it is unclear what actions constitute compliance with a regulation.

V. CONCLUSION

For the reasons stated herein, NAB respectfully requests that the Commission adopt the proposed clarifications and limited revisions outlined in NAB's Petition for Partial Reconsideration and Clarification.

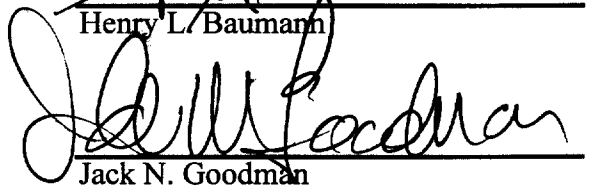
Respectfully Submitted,

**NATIONAL ASSOCIATION
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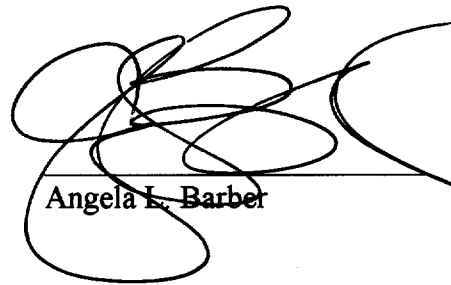
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¹⁶ For example, at least one station has told NAB it has received a fax request that the station extract specific information from public file documents and compile it into a prepared data sheet.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response of the National Association of Broadcasters to Comments Filed in Opposition to NAB's Petition for Partial Reconsideration and Clarification was mailed this 14th day of December, 1998, via First Class U.S. Mail, postage prepaid, to the following:

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